REMARKS

Reconsideration of the patentability of applicants' claimed invention is requested respectfully.

Status of the Claims

The Examiner's Action addressed all of applicants' pending claims (Claims 18 to 21 and 23 to 45) and constituted a rejection of all of those claims. Claims 18 to 21 and 23 to 37 and 39 to 45 have been cancelled. The amendment of Claim 38 and the addition of Claim 46 to 57 are requested respectfully. Upon entry of the requested amendments, there would be presented for the Examiner's consideration Claims 38 and 46 to 58, which total in number 14, of which Claim 38 is the only claim which is in independent form. The total number of claims and of independent claims is less than paid for at the time of filing of the present application. Accordingly, no claim fee is due.

The proposed amendment to Claim 38 includes the subject matter of paragraphs (i) and (ii) of Claim 18 (to be cancelled upon entry of the amendments).

For the Examiner's convenience there are set forth below bases for added Claims 46 to 58, all of which are in dependent form and all of which correspond to a previously pending dependent claim.

Added Claims

Previous Pending Dependent Claims

46

39

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47	40
48	41
49	42
50	43
51	44
52	45
53	23
54	24
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56	26
57	27
58	34

The Examiner's attention is directed to applicants' Reply dated March 1, 2005, the paragraph bridging pages 17 and 18 and the last paragraph on page 18 for a summary of applicants' claimed invention.

Summary of the Examiner's Rejections

The Examiner's Action includes a rejection of all of applicants' claims in four different §103(a) rejections which differ one from the other by citation of different combinations of references. By virtue of the claim amendments which are requested herein, the only applicable §103(a) rejection is that which the Examiner has asserted

against Claim 38. (The other of the Examiner's §103 rejections are not asserted against Claim 38 and all of the claims against which they have been asserted will be cancelled upon entry of the present amendments.) Accordingly, the only one of the four §103 rejections that needs to be addressed is the §103 rejection of Claim 38.

The Examiner's Action includes also rejections under 35 U.S.C. §112 of Claims 18 to 21, 23 to 45.

The Examiner's §112 and §103 rejections are discussed below.

Discussion of the §112 Rejections

With respect to the Examiner's rejection of independent Claim 18, as mentioned above, the entry of the present amendments will result in a cancellation of Claim 18 and the addition of the subject matter of paragraphs (i) and (ii) thereof to independent Claim 38. It is submitted respectfully that the Examiner's rejection of Claim 18 was not proper and, therefore, it is submitted that it is not applicable to Claim 38 in its proposed amended form.

The §112 rejection of the claims which define the erythromycin gel as having a viscosity of about 200,000 to about 500,000 cps is traversed respectfully. The Examiner's attention is directed to the present application, page 25, first sentence which states that particularly preferred embodiments of the invention include gels, each of which has a viscosity of about 200,000 to about 500,000 cps.

With respect to the Examiner's rejection of Claim 23, which is proposed to be added to the present application as Claim 52, it is submitted respectfully that the subject matter of Claim 23 which has been objected to by the Examiner is referred to in the present application on page 26 at lines 26 to 29.

With regard to the Examiner's rejection of Claims 42, 43 and 39, these claims which are proposed to be added respectively as Claims 49, 50, and 46 are in a form which takes into account the Examiner's objections to their earlier form.

The Examiner's §112 rejection of Claim 38 is addressed after applicants' discussion of the Examiners §103 rejection of Claim 38.

Discussion of the §103 Rejection of Claim 38

The Examiner considers Claim 38 as unpatentable over the disclosure of WO 99/02133 to Lefevre et al in view of the disclosure of WO 97/27841 TO Edens et al. The rejection is traversed respectfully.

As mentioned above, upon entry of the present amendments, the subject matter of Claim 18, as set forth in paragraphs (i) and (ii) thereof, will be incorporated into Claim 38. This subject matter relates to the viscosity of each of the gels referred to in Claim 38 and the concentrations of the ingredients comprising the composition formed from the gels.

It is requested respectfully that the Examiner enter the amendment to Claim 38 as placing the claim in condition for allowance or in better form for consideration on appeal. It is submitted that the amended claim does not require any additional

contained in such packages.

searching because the record is clear that the Examiner has conducted searches that were designed to locate prior art that is related to applicants' "gel" compositions, as well as to compositions comprising the mixed gels, and also searches for prior art that relates to the "package" aspects of the present development and compositions

The following discussion points out that neither the primary reference (Lefevre et al.) nor the secondary reference (Edens et al.) discloses the "gel" aspects of Claim 38 nor the "package" aspects of Claim 38. Accordingly, the combined disclosures of the primary and secondary reference do not result in the subject matter of Claim 38.

With respect to the "gel" aspects of Claim 38 and the Examiner's reliance on the primary reference, applicants acknowledge that this reference does in fact teach gel formulations, as pointed out by the Examiner on page 2 of the Action. However, it is clear from an overall reading of the primary reference that there is no disclosure in this publication respecting erythromycin's being in a gel form.

The primary reference discloses generally that the erythromycin constituent can be used in the form of a solution (for example, dissolved in ethanol) or in the form of a suspension (see the primary reference, page 5, lines 18 to 29). The term "suspension" is a generic term that applies broadly to particles dispensed in a fluid. Accordingly, there are species of suspensions which species are not gels. See Appendix (A) and Appendix (B) which are dictionary definitions respectively of the terms "suspension" and "gel".

Note particularly that the primary reference refers to benzoyl peroxide being in the form of a gel whereas erythromycin is referred to as being dissolved in ethanol in the presence of a thicking agent – no reference to a gel (see the primary reference, page 6, lines 9 to 21). Furthermore, the viscosities of the involved compositions are identified as between 500 and 5000 cps, whereas applicants' claims define the gels as having viscosities of at least about 200,000 cps, that is, at least 40 times higher than the aforementioned viscosities referred to in the primary reference.

Furthermore, Example 1 of the primary reference clearly teaches a composition comprising erythromycin, various solvents, and Carpobol Ultrex viscosifier and that such composition exits in the form of a "...clear solution..." (see the primary reference, the paragraph bridging pages 8 and 9, and particularly the sentence which bridges page 8 and 9). A clear solution is <u>not</u> a gel.

It is submitted respectfully that the disclosure of the primary reference simply does not disclose the use of erythromycin in the form of a gel.

The secondary reference cited in the §103 rejection is International Publication No. WO 97/27841 to Edens et al. At the bottom of page 13 through page 15 of the Action, the Examiner relies on DE 3630849 which is referred to on page 9 of Edens et al. for a teaching of applicants' claimed package. Applicants have reviewed Edens et al. and the U.S. publication which corresponds to DE 3630849, namely U.S. Patent No. 4,823,985. (A copy of this patent was provided to the Examiner in applicants'

Reply dated March 1, 2005 – see Appendix B thereof). Nothing relevant has been found in Edens et al that is not in the '985 patent.

In the '985 patent, two embodiments are disclosed. Figure 1, which illustrates the preferred embodiment, is not capable of being folded along a common side contrary to the Examiner's statement. There are no common sides in Figure 1 of the '985 patent, and even if there were, the two adjacent sides of chambers 2 and 3 would not be capable of being folded in the manner disclosed and claimed by applicants. The remaining embodiment found in the '985 patent does show, in Figure 2, a common wall 104 dividing the two compartments as shown in cross-section. However, there is no teaching or suggestion of how wall 104 might be folded. There is no mention of folding at all in the text of the patent. There would be no reason for folding as called for in Claim 38 since the portions of the packets of the reference from which the dispersing orifices are formed are already adjoining one another. Accordingly, the "package" aspects of applicants' Claim 38 distinguish over the Edens et al. disclosure and the '985 patent.

In summary, the combined disclosure of the primary and secondary references do not disclose either the "gel" aspects or the "package" aspects of Claim 38. It is requested that the involved §103 rejection be withdrawn.

Discussion of the Examiner's §112 Rejection of Claim 38

Entry of the present amendment to Claim 38 would modify the claim to recite

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viscosity ranges for the gels referred to therein and amount ranges for the benzoyl peroxide and erythromycin constituents comprising the gel composition defined in Claim 38.

As regards other of the Examiner's comments respecting Claim 38, the Examiner's attention is directed to the present application and the paragraph bridging pages 23 and 24, and particularly the last complete sentence on page 23 and continuing through the end of the paragraph on page 24.

The volume of composition dispensed from the packet is dependent on not only the force applied, but also on the viscosity of the composition.

In view of the above it is requested respectfully that the application be allowed in an early and favorable Action.

This Reply is accompanied by a request to extend the time to respond to the Examiner's Action and a Notice of Appeal.

Respectfully submitted, Synnestvedt & Lechner LLP

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pl.—veys 1 a detailed study or inspection, as by gathering information through observations, questionnaires, etc. and analyzing it 2 a general view; comprehensive study or examination (a survey of the content of land b) a treat I a general view, comprehensive study or examination (a survey of Italian art) 3 a) the process of surveying a tract of land b) a tract surveyed c) a plan or written description of this

surveyed to a plan of written description of this surveysing (ser va'in) n. 1 the act of one who surveys 2 the science or work of making land surveys

surveyor (-or) n. [ME surveior < OFr surveour] a person who surveys, esp. one whose work is surveying land

surveyor's level an instrument consisting of a revolving telescope mounted on a tripod and fitted with cross hairs and a spirit level, used by surveyors in finding points of identical elevation

surveyor's measure a system of measurement used in surveying, based on the chain (surveyor's chain) as a unit; see CHAIN (n.

50)

Sur-viv-able (sər viv'ə bəl) adj. capable of surviving or being survived —sur-viv-abil'-ity n.

Sur-vival (sər vi'vəl) n. 1 the act, state, or fact of surviving 2 someone or something that survives, esp. an ancient belief, custom. usage etc.

tom, usage, etc.

Sur-viv-al-ist (-ist) n. 1 someone strongly determined to survive 2 a person who takes measures, as storing food and weapons, living in a wilderness, etc., to ensure survival after an expected economic collapse, nuclear war, etc.

Survival of the fittest nontechnical term for NATURAL SELECTION

SURVIVAL OF the littlest nontechnical term for NATURAL SELECTION SURVIVE (sar viv') vt. ...vived', ...viv'.ing [ME surviven < OFR surviver < L supervivere < super, above (see SUPER.) + vivere, to existence of; outlive or exist longer than or beyond the life or existence of; outlive 2 to continue to live after or in spite of /to survive a wreck/ —vi. to continue living or existing, as after an event or after another's death

event or after another's death

SUI-vi-vor (say vi'var) n. 1 a person or thing that survives; specif.,
a person who has survived an ordeal or great misfortune 2 a
person regarded as resilient or courageous enough to be able to
overcome hardship, misfortune, etc.

overcome nargsnip, mistortune, etc.

Sur.vi.vor.ship (sər vi'vər ship') n. 1 the state of being a survivor 2 Law the right of a surviving owner or owners of property held as under joint tenancy to undivided ownership upon the death of either or any of them

SUS- (sus, sas) prefix SUB-: used before c, p, and t [susceptible, suspend, sustain]

Susa (soo'sä) capital of ancient Elam, now a ruined city in W Iran

Susa (soo'sa) capital of ancient Elam, now a ruined city in W Iran Su san (soo'zan) n. [Fr Susanne < LL(Ec) Susanna < Gr(Ec) Sousanna < Heb shoshana, lily a feminine name: dim. Sue, Susie, Suzy, var. Susanna, Susannah; equiv. Fr. Susanne, Suzanne Susannah or Su sannah asoo zan'a) n. 1 a feminine name: see elders whose advances she had spurned b) the book of the O.T. sus-cep tance (so sep'tons) n. [r fol. + ANCE] Elec. a component and admittance, measured in siemens: it is the reciprocal of react-

ance

sus-cep-tibil-ity (so sep'to bil'o te) n., pl. -ties [ML susceptibilitas]

1 the quality or state of being susceptible 2 [pl.] sensibilities; feelings 3 a susceptible temperament or disposition; capacity for receiving impressions 4 Physics the ratio of electric or magnetic that polarization in a material to the strength of the field producing susceptible (so septimble sensible for septimble for sept

that polarization

sus-cep-tible (so sep'to bol) adj. [ML susceptibilis & L susceptus, pp. of suscipere, to receive, undertake & sus- (see SUB-), under + capere, to take (see HAVE)] easily affected emotionally; having a for; admitting; allowing /testimony susceptible of that gives a chance for; admitting; allowing /testimony susceptible of error/—susceptible to disease/—sus-cep-tible-ness n.—sus-cep-tible adv.

tible to easily influenced by or affected with [susceptible to disease]—sus-cep-tible ness n.—sus-cep-tibly adv.
sus-cep-tive (sa sep'tiv) adj. [ML susceptible 1 SUSCEPTIBLE 2 RECEPTIVE—sus-cep-tiv-ity (sus'ep tiv'a te) n. or sus-cep'-tiveness sus-cep-tiv-ity [sus'ep tiv'a te) n. or sus-cep'-tiveness RECEPTIVE —sus-cep-tiv-ity (sus'ep tiv'ete) n. or sus-cep'-tive-ness su-shi (so she) n. [Jpn] a Japanese dish consisting of small cakes of cold cooked rice flavored with vinegar, typically garnished with strips of raw or cooked fish, cooked egg, vegetables, etc.

Sus-lik (sus-lik) n. [Russ, gopher, akin to OSlav sysati, to whistle, buzz < IE echoic base *sus- > Ger sausen, to whistle] 1 a small ground squirrel (Citellus citellus) of NC Eurasia 2 its fur

buzz < IE echoic base *sūs- > Ger sausen, to whistle 1 a small ground squirrel (Citellus citellus) of NC Eurasia 2 its fur ILME suspect (so spekt'; for adj. usually, & for n. always, sus'pekt') vt. ILME suspecten < L suspectus, pp. of suspicere, to look under, look look (see Spy) 1 to believe (someone) to be guilty of something specified, on little or no evidence 2 to believe to be bad, wrong harmful, questionable, etc.; distrust 3 to think it probable or cion—adj. viewed with suspicion; suspected—n. a person who is suspected, esp. one suspected of a crime, etc.

Sus-pend (so spend') vt. IME suspenden < OFr suspendre < L suspendere, to hang up < sus-, for sub-, SUB- + pendere, to hang: see pentill 1 to bar or exclude as a penalty from an office, school, cease or become inoperative for a time; stop temporarily /to suspend train service, to suspend a rule/3 a) to defer or hold back action on (a sentence, etc.) 4 to hang by a support from above so as in a liquid, etc.) in suspension 6 [Now Rare] to keep in suspense wonder, etc. 7 Music to continue (a note) into the following chord

obligations, as through inability to payment of debigations, as through inability to pay—SYN. EXCLUDE, Auto the vital functions resembling death

the vital functions resembing death
sus-pend-ers (-darz) pl.n. 1 a pair of straps or bands passed
the shoulders to hold up trousers or a skirt 2 [Brit.] garter

holding up stockings

Sus-pense (sə spens') n. [ME < MFr suspens, suspense, deferring < ML suspensum < L suspensus, suspended, under thit, hung up, pp. of suspender, to Suspended, undecided or undetermined 2 a state of usually anxious tainty, as in awaiting a decision 3 the growing interest and ment felt while awaiting a climax or resolution, as of a novel legal right —sus-pense full adj.

Suspense account Bookheeping an account in the suspense suspense account Bookheeping an account in the suspense suspense account Bookheeping an account in the suspense suspense suspense account Bookheeping an account in the suspense suspens

legal right —sus pense rui au.

suspense account Bookkeeping an account in which itemporarily entered until their disposition can be determined.

for its pense for a spen sar a linformall a suspense. temporarily entered until their disposition can be determined a suspense (sə spen'sər) n. [Informal] a suspenseful novel

etc.

etc.

sus-pen-sion (so spen'shon) n. [ML suspensio < LL, an archive suspensios: see Suspensios 1 a suspending or being suspensios; see Suspensios 1 a suspending or being suspensios; specif., a) a temporary barring from an office, school, etc. shool, etc. of a temporary stoppage of payment, service, etc. of a temporary celling, as of rules d) a deferring of action on a sentence, work upon or from which something is suspended 3 the systems, shocks, etc. supporting a vehicle upon its undercarried in a timepiece 5 Chem. a) the condition of a substance in a timepiece 5 Chem. a) the condition of a substance in the condition of one having relatively large particles that will see the continuing of one or more tones of one chording following chord while the other tones are changed, so that at a suspension bridge a bridge suspended from chains or cables which are anchored at either end and supported by towers at regular intervals

suspension point any of a series of dats properly three

regular intervals
suspension point any of a
series of dots, properly three,
indicating the omission of a
word, phrase, sentence, etc., as
from something quoted
sus.nen.sive (sa spen'siv) add

Sus-pen-sive (so spen'siv) adj.

[ML suspensivus] 1 that suspends, defers, or temporarily stops something 2 tending to suspend judgment; undecided 3 of characterized by suspending the su

stops something 2 tending to suspend judgment; undecided 3 of, characterized by expressing, or in suspense 4 [Rare] of or characterized by physical suspension—sus-pen-sively adv.

Sus-pen-soid (-soid') n. [SUSPENS(ION) + (COLL)OID] a system solid, colloidal particles suspended in a liquid sus-pen-sor (-sor) n. [ML] 1 SUSPENSORY 2 Bot. a cell or group the endosperm suspending plant into its food supsemble suspension, or sustaining (a suspension with the endosperm of a higher plant into its food supsemble suspending, supporting, or sustaining (a suspension with bandage 2 suspending or delaying, esp. so as to leave something undecided —n., pl. -rles 1 a suspension with suspending mesh fabric pouch for supporting the scrotum, on a bandage mesh fabric pouch suspending the scrotum, on a bandage mesh fabric pouch suspending the scrotum, on a bandage mesh fabric pouch suspending the scrotum, on a bandage mesh fabric pouch suspensions with the suspension of the suspension with the suspension of t

suspensory ligament any of various ligaments supporting suspensory ligament any of various ligaments supporting organs; esp., a ligament supporting the lens of the eye suspection (so spish'on) n. [ME suspection < Anglo-Fr suspection, original looking up to, esteeming, light sense and sp. of L suspecto, suspicion < L suspectua, pg. 1 the act or an instance of suspecting guilt, a wrong, harmfulf, and the act or an instance of suspecting guilt, a wrong, harmfulf, etc. with little or no supporting evidence 2 the feeling or statement of a person who suspects 3 a very small amount or derest above suspicion not to be suspected, honorable—on suspicion pected.

sus-pi-cious (-as) adj. [ME suspecious < OFr < L suspicious arousing or likely to arouse suspicion in others 2 showing to suspect, esp. to suspect evil —sus-pi'-ciously adv. —s

to suspect, esp. to suspect evil —sus-pi'-ciously adv. —sus-pi-ness n.

Sus-pire (sə spir') vi. —pired', —pir'-ing [ME suspiren < L suspirato breathe out < sub-, SUB- + spirare: see SPIRIT] [Rare] to tal. Sus-que-hanna (sus'kwi han'ə) [< earlier Sasquesahano] name of an Iroquoian tribe in an unidentified Eastern Algonque language < name of the river: meaning of name unknown] iii. flowing from central N.Y. through Pa. & Md. into Chesapeake Editation (715 km)

SUSS (SUS) vt. [shortened < SUSPECT] [Slang, Chiefly Brit.] to figure out; grasp, as a result of investigation, study, or intuition: of with out.

Sus-sex¹ (sus'iks) n. any of a breed of domestic chicken, origing in Sussex, with speckled or reddish feathers, usually raised to its meat





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III (soo'tra) .

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en ta-t free freed; 1 fistain en ta cen tion

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act of joining such a join and a Bot. a) a discence along at the act or the act or fut, thread, with the act or fut, thread, with the act or as with the act or as with or as with su abbrev. SPORT (800'vä) cap

729-1800; Ru

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COLLEGE DICTIONARY

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orkman's harness disk, etc. her or with often pl.) a of one con-(another c) ch a system ton a system performing ting gear]— ughly accept-tito furnish adapt (one another [to 3 Mech. furnish with VI. Mech. to adjustment wn to adjust lement goes ment, with a



GEARS

ue—gear up he driven element goes faster than the beguent decrease in torque 2 to accelhisequent decrease in torque 2 to accel-fly/the factory geared up production— ement of gears providing the greatest Informall high speed or efficiency—In-banected to the motor 2 (not) in proper der—xlow gear 1 the arrangement of led but great torque 2 [Informal] low se.gear the arrangement of gears provid-motion—xshift gears 1 to change from

gel-ada (jel'a da, ja la'-) n. [ModL, the species name; of Sem orig.] an Ethiopian baboon (Theropithecus gelada) characterized by a bare red patch on the chest: also gelada baboon

Ge lan de sprung (go len'do shproon') n. [Ger < gelande, open terrain + sprung, a leap] Skiing a jump, as over an obstacle, made from a crouching position by propelling oneself with the ski poles See the inside front cover for pronunciation information. The symbol * is used to mark terms of American origin;

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